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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,836	06/03/2002	Motoki Kato	450101-03301	2408
20999	7590	11/20/2006	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			DUNN, MISHAWN N	
			ART UNIT	PAPER NUMBER
			2621	
DATE MAILED: 11/20/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/018,836	KATO ET AL.	
	Examiner	Art Unit	
	Mishawn N. Dunn	2621	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 June 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,4,6 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,6 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

The previous action inadvertently belonged to the original set of claims, not the claims provided in the preliminary amendment filed 6/3/2002. This action is the correct one. The period for response is restated with the mailing of this action. The Office regrets any inconvenience to the Applicant.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13 and 16-18 recite the limitation "the elapsed time." There is insufficient antecedent basis for this limitation in the claims.
3. Claims 6, 15 and 19 recite the limitation "the lapse of time." There is insufficient antecedent basis for this limitation in the claims
4. Claim 4 recites the limitation "the VBV buffer." There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 3, 13, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando et al. (US Pat. No. 5,717,641).
7. Consider claim 13. Ando et al. teaches an encoding apparatus for encoding picture data, comprising: an encoder for encoding said picture data at a variable rate (col. 2, lines 53-54); and a controller having an encoding mode in which the volume of encoded data is substantially proportionate to the elapsed time (col. 4, lines 9-67; fig. 1) and another encoding mode in which it is not guaranteed that the volume of encoded picture data is proportionate to the elapsed time, said controller controlling the volume of encoded picture data depending on the pertinent encoding mode (col. 4, lines 9-67).
8. Consider claim 14. Ando et al. teaches the encoding apparatus according to claim 13 wherein said controller manages control so that stuffing bytes will be encoded if the amount of said picture coding data generated per unit time is less than a preset value (col. 4, lines 9-67).
9. Consider claim 3. Ando et al. teaches the encoding apparatus according to claim 14 wherein said controller verifies whether or not the stuffing bytes will be encoded depending on the amount of data generated in encoding respective pictures (col. 4, lines 9-67).
10. Method claim 16 is rejected using similar reasoning as corresponding apparatus claim 1.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claim 4, 6, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US Pat. No. 5,717,641) in view of Isnardi (US Pat. No. 6,687,384).

14. Consider claim 4. Ando et al. teaches all the claimed limitations as stated above, except the encoding apparatus according to claim 14 wherein said controller manages control of encoding the stuffing bytes so that no overflow will be produced in the VBV buffer.

However, Isnardi discloses that a controller manages control of encoding the stuffing bytes so that no overflow will be produced in the VBV buffer (col. 11, lines 11-38).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to use, to encode the stuffing bytes, in order to keep the VBV buffer from overflowing.

15. Consider claim 6. Ando et al. teaches the encoding apparatus according to claim 15 wherein said controller generates additional information indicating whether or not the encoding mode is such encoding mode in which the amount of said picture coding data is substantially proportionate to the lapse of time (col. 4, lines 9-67).

16. Consider claim 15. Ando et al. teaches all the claimed limitations as stated above, except the encoding apparatus according to claim 13 wherein said controller manages control to perform encoding in an encoding mode in which the amount of said picture coding data generated is substantially proportionate to the lapse of time within a preset error range.

However, Isnardi discloses that a controller manages control to perform encoding within a preset error range (col. 11, lines 11-38).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to use, to have a preset error range, in order to keep the buffer from underflowing/overflowing.

17. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US Pat. No. 5,717,641) in view of Official Notice.

18. Consider claims 17 and 18. Ando et al. teaches all the claimed limitations as stated above, except a computer-readable medium encoded with a computer program.

Examiner takes official notice that it is well known to have a computer-readable medium encoded with a computer program.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to use, to provide a computer-readable medium encoded with a computer program, in order to execute the instructions set forth.

19. Consider claim 19. Ando et al. teaches a flag indicating whether or not encoding has been made in an encoding mode in which the file size of said AV stream is substantially proportionate to the lapse of time (col. 4, lines 9-67, wherein the absence/presence of the stuffing bytes are the flag).

Ando et al. does not disclose a recording medium having picture data recorded thereon, said recording medium having recorded thereon an AV stream file including said picture data and audio data associated with said picture data.

Examiner takes official notice that it is well known to have a recording having recorded thereon an AV stream file including said picture data and audio data associated with said picture data.

20. Consider claim 20. Ando et al. teaches that the flag is a time controlled flag (col. 4, lines 9-67).

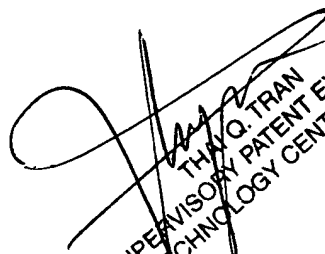
### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mishawn N. Dunn whose telephone number is 571-272-7635. The examiner can normally be reached on Monday - Friday 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mishawn Dunn  
October 31, 2006

  
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